

REMARKS

No claims have been amended by this response.

Claims 1, 5-9, 19 and 20 are pending.

Examiner Interview

Applicants thank the Examiner for her time spent on a telephonic interview on April 5, 2006. During that interview, applicants' agents and the Examiner discussed arguments that overcomes the rejections recited in the December 13, 2005 Office Action.

As described more fully below, applicants respectfully submit that the pending claims overcome the cited art and in condition for allowance.

Claims Rejections

Claims 1, 5, 7, 8, 19, and 20, are rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,458,854 to Burns, ("Burns") and rejected claims 6 and 9 under 35 U.S.C. §103(a) as being unpatentable over Burns.

The rejections are respectfully traversed.

Of the claims rejected, claim 1 is independent, with the remaining claims dependent thereon.

Claim 1 recites among other things an assembly with the following features:

*an elongate tubular housing having opposed first and second ends; and
a solid partition positioned within said housing between said first and second ends;....
said second end comprising a bottom end below said partition, said bottom end comprising an annular skirt and a semi-spherical bottom.*

The Examiner states in the Office Action mailed December 13, 2005 (emphasis added):

As to claim 1, Burns teaches a one-piece collection container assembly comprising an elongate tubular housing having opposed first and second ends ; and a solid partition 38 positioned within the housing between the first and second ends; the housing defining a volume for specimen collection therein between the first end and the partition; the second end comprising a bottom end below said partition, the bottom end comprising an annular skirt at 47 and a semi-spherical bottom at 38.

Applicant respectfully points out that the Examiner has used a single element (38) of Burns to represent two different elements in Applicant's invention, i.e. partition (76) and semi-spherical bottom (80).

Burns fails to disclose at least the claimed features of: a bottom end below a solid partition, with the bottom end comprising an annular skirt and a semi-spherical bottom. In Burns, only an annular skirt 37 exists below the partition – there is no semi-spherical bottom.

For these reasons, Burns does not anticipate claim 1.

Nor would Burns render claim 1 obvious.

If a user of the Burns collection container desired compatibility with diagnostic equipment, Burns provides its own solution – one or more extensions (90) placed into the annular skirt (37). (See Figs. 7 and 8, and Col. 5, lines 13-24.) Thus, the only motivation the Examiner has presented for changing the Burns design, i.e., compatibility, is already addressed within Burns itself. One skilled in the art, reading Burns, would have no apparent need to modify the Burns container for diagnostic compatibility.

In addition, Burns discloses that its annular skirt has 2 specific functions – allowing the assembly to be placed upright on a flat surface (Col. 3, lines 50-52), and being compatible with the container cap, such that the cap can be retained at the bottom of the Burns assembly during sample collection (Col. 5, lines 7-12). Modifying the Burns container in the manner necessary to reach Applicant's claimed invention goes against these explicit functions of the Burns container. One would not do so, particularly where Burns provides its own solution to the issue of compatibility with equipment.

Moreover, such a modification of the Burns container would in fact destroy these 2 functionalities, since a rounded bottom would not allow one to place the container on a flat surface, nor would the rounded bottom retain the cap during use. It is well-accepted that an obviousness rejection based on modifying or combining references in a manner that destroys the references' intended function cannot stand. See, e.g., In re Gordon, 733 F.2d 900, 221 U.S.P.Q. 1125 (Fed. Cir. 1984).

In view of the remarks herein, applicant submits the claims are patentably distinct over the prior art and allowable in form.

The Commissioner is hereby authorized to charge payment of any additional fees associated with this communication or credit any overpayment to Deposit Account No. 02-1666.

If the Examiner has any questions or comments relating to the present application, he or she is respectfully invited to contact Applicant's agent at the telephone number set forth below.

Respectfully submitted,

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Dated: April 11, 2006.

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Doc# 106008v1